

**REMARKS**

Applicants submit that the amendments herein are fully supported in the present specification as filed and add no new matter. Applicants note that the amendment to claim 15 does not raise any new issues, as claim 15 has been correctly interpreted as indicated in the Office Action at page 9, paragraph 4.

Also, Applicants submit the following remarks, and the remarks herein address issues that are first raised in the outstanding Office Action and were not made earlier. Accordingly, Applicants respectfully request entry of the present reply.

In the alternative, if the Examiner continues with the rejections of the present application, it is respectfully requested that the present Amendment After Final be entered for purposes of an Appeal. The Reply reduces the issues on appeal by overcoming the claim objection stated in paragraph 14 of the Office Action. Thus, the issues on appeal would be reduced.

***Status of the Claims***

Claims 6-11, 13 and 15-16 are pending in the present application.

The amendment to claim 15 does not add new matter (see the Office Action at page 9, paragraph 15). Entry of the present Amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw the objection and rejection and allow the currently pending claims.

***Issues under 35 U.S.C. § 103(a)***

Claims 6-11, 15 and 16 stand been rejected under 35 U.S.C. § 103(a) as being unpatentable over Okuda *et al.* '140 (WO 00/53140 A1) (see paragraph 15 of the outstanding Office Action). Applicants respectfully traverse, and reconsideration and withdrawal of this rejection are respectfully requested.

The Examiner has considered Applicants' previously filed reply of April 6, 2006, but maintains the instant rejection for the various reasons stated in paragraphs 1-12 of the outstanding Office Action. In general, the Examiner comments that the totality of evidence of non-obviousness of the claimed invention fails to outweigh the evidence of obviousness (see paragraph 1), and that the present invention has not achieved unexpected results (see paragraph 2). Applicants respectfully traverse, and provide the following additional information.

Applicants herein enclose Tables 1 and 2 (two separate attachments) that supports Applicants' previously submitted arguments.

(i) Table 1

Table 1 depicts the constitution or make-up of a conventional diaper, the present invention, and three diapers that correspond to the cited Okuda '140 reference. In this regard, the comparative showing need not compare the claimed invention with all of the cited prior art, but only with the closest prior art. *See* M.P.E.P. §§ 716.02(b) and 716.02(e); *see also In re Fenn et al.*, 208 USPQ 470 (CCPA 1981). In the instant situation, Okuda '140 is the only cited prior art and is thus the closest prior art. The three Okuda '140 embodiments shown in Table 1 are also depicted in the Graph and Table of the "Comparative Data" sheet that was also filed with

Applicants' reply of April 4, 2006. In the "Comparative Data" sheet, Examples A, B, and C are the diapers of Okuda '140.

(ii) Table 2

The attached Table 2 is a figure based on the graph of the previously submitted "Comparative Data" sheet. Table 2 also contains the data of Comparative Examples A, B and C from the previously filed *Graph 1* of *Material 1* and *Graph 2* of *Material 2*. As previously explained in the April 26 response, *Graph 1* shows the changes of the tensile load of the standing gathers which are stretched from their naturally contracted state (load 0) after taken out from a diaper to the length nearly at the time when fixed to a diaper which is stretched substantially flat.

(iii) The Present Invention Compared to Okuda '140

Okuda '140 uses Lycra as the elastic member, and arranges a number of elastic members in such a way that they widely disperse from the free end to the base end. The make-up of Okuda '140 embodiments can be seen from the attached Table 1 (e.g., Lycra 620 dtex is used to create these embodiments).

Regarding the use of Lycra as the elastic member as disclosed in Okuda '140, Table 2 shows how any and all of the Okuda '140 diapers (Comparative Examples A-C) do not satisfy the required elements of the present invention (e.g., increase rate in tensile load). Applicants note how Okuda '140 diapers A and B start at about the same point as the present invention in terms of the gather length. Though the curve of Comparative Example A ends up near the same point as the present invention, Applicants note the slopes of each curve. In this regard, please

see *Material 1* of *Graph 1*, which shows the time frame when diapering a baby/wearer in a standing position. Taking that time frame, note how the slope of the present invention differs from that of Comparative Examples A-C. These curves of Table 2 shows how the Okuda '140 embodiments/diapers achieve inferior curling up and would not fit as well as the diaper of the present invention.

And as previously explained, in contrast to the present invention, conventional diapers have standing cuffs that do not contract like the present invention which leads to gaps and leakage of body waste. Further, one of the problems in the art is that increasing the extension ratio in a conventional diaper to open the contracted diaper leads to excessive curling with sacrifices in fitting, absorption and leakage properties (see also *Referential Figure 1* of *Material 1*). In contrast, the instantly claimed combination of the high extension ratio and the increase rate of tensile load enhances the rising capability of the standing gathers and at the same time lowers the rising capability of the standing gathers. This claimed combination also leads to the present invention succeeding in solving the diapering problem due to strong tendency to curl up by suppressing the behavior to contract or retarding the contraction. The attached Tables 1 and 2 show how the present invention achieves such advantages (in an unexpected fashion). In particular, see Table 2 of how the present invention behaves better over the comparative examples. Thus, Applicants respectfully request the Examiner to reconsider the patentability of the present invention.

Applicants also take this opportunity to state that one of the reasons for Applicants requesting the Interview of March 30, 2006 was to emphasize how the Okuda '140 embodiment(s) could not achieve the advantages of the present invention. For instance, the

*Materials 1 and 2* were shown during the Interview to show that Okuda '140 depicts a diaper that has different cuffs and leads to different properties in leakage, absorption and fit. And as stated above, the advantages of the present invention include reducing the tendency of the diaper to curl, which leads to drawbacks such as improper fitting and leakage. Applicants are submitting Tables 1-2 to emphasize such unexpected advantages of the present invention.

Accordingly, it is respectfully submitted that the present invention has achieved unexpected results and that totality of evidence of non-obviousness of the claimed invention does outweigh the evidence of obviousness. Reconsideration and withdrawal of this rejection are respectfully requested.

### ***Claim Objections***

Claims 15-16 are objected to as being dependent on claim 1. This objection has been rendered moot with the change to claim 15 as presented herein. Withdrawal of this objection is respectfully requested.

### ***Conclusion***

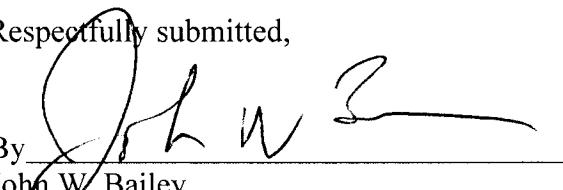
A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: September 14, 2006

Respectfully submitted,

By 

John W. Bailey  
Registration No.: 32,881  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road, Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant

Attachments: Table 1  
Table 2

Table 1

	Elastic member	Number of elastic member	Gather pitch	Tensile ratio of each elastic member	Conventional diaper
①Control	Lycra 620 dtex	3	Free end   3   5   28 base end	Same	Diaper of the present invention
②Present invention	JF	3	Free end   3   5   28 base end	Same	Corresponding to diaper of Okuda Reference
Comparative Example A	Lycra 780 dtex	4	Free end   6   18   8   4 base end	Same	Corresponding to diaper of Okuda Reference
Comparative Example B	Lycra 780 dtex	4	Free end   6   18   8   4 base end	Same	Corresponding to diaper of Okuda Reference
Comparative Example C	Lycra 940 dtex	5	Free end   6   9   12   6   7 base end	Same	Corresponding to diaper of Okuda Reference

Table 2

